IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.3

W.P. No. 1070(M/S)/2003

Ved Prakash Tyagi and others …Petitioners.

Vs.

A.D.J./Ist F.T.C. Haridwar and others ….Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Sharad Sharma learned counsel for the petitioners.

2- This petition under Article 227 of the Constitution of India is preferred against the impugned order of the trial court dated 7-10-99 and of the appellate court dated 15-9-2003 whereby the application for injunction preferred by the plaintiff in O.S. No. 26 of 1988 was allowed and the miscellaneous appeal preferred by the defendant-petitioners had been dismissed.

3- The dispute pertain to alleged passage shown by letters Ka, Kha, Ga, Gha, in the sketch map of the written storied and it is not in dispute that the plaintiff No.1 had constructed a three storied house which had its opening in the passage towards north and the occupants of the house are using the passage for ingress and egress. The defendant-petitioners claim that the alleged passage is set apart exclusively for their own use and their transferee has have no right to use this passage because all the purchasers have their passages in the west on the Dehradun-bypass road. Considering the fact that the petitioners did not raise any objection initially when the construction was being raised by the plaintiff in the plot purchased from them and the opening were made towards the passage for use by the plaintiff and occupants of the house, it was just and proper on the part of the trial Judge to restrain the defendants from interfering in the use of the passage by them. As to things stand, the plaintiffs have got prima facie case and the balance of convenience also lie in their favour and they were likely to suffer irreparable injury if they are deprived of use of passage in which the doors of the house open. The application for injunction

was rightly allowed by the learned trial Court and the miscellaneous appeal has also rightly been dismissed by the appellate Court

4- There being no merit in this petition, the same is dismissed in limine.

5- However it is directed that the parties shall maintain status quo and no further openings shall be made into the passage referred above till the disposal of the original suit. The trial court is directed to expedite and conclude the trial of the suit, preferably, within a period of six months from the date of the receipt of the copy of this order.

(Irshad Hussain, J.)

Dated: 23-10-2003

ISB